



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
LANSING

DAN WYANT
DIRECTOR

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Public Information and Records Integrity Branch (PIRIB)
Information Resources and Services Div. (7502C)
Office of Pesticide Programs
Environmental Protection Agency
1200 Pennsylvania Ave. N.W.
Washington D.C. 20460

RE: Docket Identification Number OPP-2002-0231

Dear Sir/Madam:

The following comments are provided by the Michigan Department of Agriculture (MDA) in response to the Federal Register Notice Volume 68, Number 79, pages 20145-20155, published on April 24, 2003 regarding the emergency exemption process revisions pilot project:

The comments are organized under three specific headings.

Allowing states to re-certify that an "emergency situation" continues to exist

MDA is very supportive of allowing states to "re-certify" that the emergency conditions, which initially qualified for an exemption, continue to exist in the second and third year. The following bullets are justification for this position:

- ✓ **The urgent non-routine situation has not changed.** Generally, the pesticide being requested under FIFRA section 18 is the best alternative in the pipeline if not the only product in the pipeline. If that product does not get registered during the year the section 18 exemption is granted, then the urgent, non-routine situation will continue to exist in the subsequent year(s) until the product gets registered.
- ✓ **Once a section 18 emergency exemption is granted, the economics no longer change from year to year in such a fashion as to impact the determination that an urgent, non-routine situation still exists.** For example, if a section 18 exemption is granted for use on a specific crop, the emergency condition no longer exists because there is a product that will control the pest. Therefore, the petitioner must use the projected loss figures from the initial application since subsequent production figures should have improved with use of the section 18 product.

- ✓ **Data from the current season are difficult to obtain early.** Michigan harvests crops into the month of November. Data from the growing season are often not available until harvest is complete and production information can be assembled. This causes a delay in the submission of the updated section 18 request to EPA, which in turn delays EPA's granting of the section 18 request. Most often the section 18 requests are not granted until the height of the pest occurrence giving growers very little, if any lead time for appropriate planning. In addition, due to the points raised in number 2 above, current production data are no longer meaningful as they relate to the emergency condition since they do not (hopefully) reflect losses with use of the section 18 pesticide.
- ✓ **Having early knowledge that a section 18 exemption will be granted for the upcoming growing season will give growers more time to strategize and receive education on proper use of the product.** If growers know in advance that they will have use of a section 18 product, they will have more time to determine how to use the product in the most optimal way. In addition, Extension specialists can include information regarding the section 18 products in their winter meetings.
- ✓ **Better utilization of resources** ... for the Extension specialist, the state lead agency (SLA), growers and EPA. Allowing states to re-certify will give SLAs more time to do a better job on the initial applications. States are being asked to do more and more with less and less and they need to prioritize the tasks.
- ✓ **EPA will retain their authority to rescind/deny the emergency exemption** for cause, should additions to its risk database warrant such action.

In regard to the pilot project, we were disappointed that the pilot was limited only to products that were previously identified by EPA as reduced risk pesticides. We submit approximately 16-18 section 18 exemption requests annually and given this limitation, we had no exemption requests that met the criteria of reduced risk and therefore, we could not participate in this aspect of the pilot project. It is understandable that EPA would limit the scope of the pilot project but it is our hope that the criteria be modified in the future to include any product which was previously requested under FIFRA section 18.

Tiered approach for documentation of "significant economic loss."

The MDA supports the use of yield loss and/or other economic indicators instead of or in addition to the 5-year production cost averages for crops with high variability. Most section 18 exemptions are for use on minor crops. All of the section emergency requests MDA submitted for use in 2003 were for use on minor crops. Current Agency guidance says that loss is significant only if it exceeds the normal variation in profits over a 5-year timeframe. MDA believes that this practice discriminates against minor use crops with high variability- a much higher loss is required to fall outside the normal range and it doesn't take into account a number of factors outside of the control of the grower which cause fluctuation in profits/losses and mask the emergency nature of the situation. For example with Phytophthora crown and root rot of cucurbits it is difficult to quantify fruit loss due to this disease because the damage occurs postharvest from inoculation that occurred in the field. The time involved to grade, pack, and

ship the fruit provides adequate incubation time and conditions such that when the fruit arrive at their final destination disease symptoms are evident and the produce rejected. Unfortunately, these common scenarios are not documented as are field yields. Losses in the state as a result of Phytophthora are overwhelming. When a load is rejected, the grower incurs costs of harvesting, packing, shipping, and dumping of the diseased produce.

Resistance Management

MDA is supportive of section 18 exemptions for resistance management where there is documented scientific evidence of resistance to currently registered pesticides or where valid research demonstrates that a dynamic process of resistance is developing. Resistance management is the process of prolonging the useful life of a pest control tool by delaying the selection of pest populations that are resistant to it. Resistance management programs are seen philosophically in the context of integrated pest management (IPM). In IPM programs, pests are held below economic injury levels by utilizing the optimum combination of strategies, which offer the most minimal adverse effects. Requiring that growers "use up" all of their effective pest management tools before the situation is considered to be an emergency as defined by the Section 18 regulations seems not to be in accordance with the principles of IPM. The future success of resistance management depends on the continued availability of a diverse arsenal of efficacious pest management tools. While it is unrealistic to expect the emergency exemption process alone to provide the solution to the pest resistance problem, its judicious use in a proactive manner could offer a significant contribution to the resistance management effort.

In summary, the Michigan Department of Agriculture is supportive of the process revisions proposed in this FR-Notice. In regard to the pilot project, we fear that the agency limited the pilot to such an extent that the information derived from the pilot project will have limited meaning. It is our sincere hope that the Agency will move forward with rulemaking to implement the process revisions and that the criteria for state recertification of the emergency conditions be modified to include any product which was previously requested under FIFRA section 18.

Thank you for the opportunity to provide input. If you have any questions, please feel free to contact me at (517) 373-4087.

Sincerely,

Kenneth J. Rauscher, Director
Pesticide & Plant Pest Management Division

cc: Bruce Wilkinson, EPA, Region 5